IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.3500 OF 2006

Shaan Ranjeet Uttamsingh and another ...Applicants
vs.
The State of Maharashtra and another ...Respondents

Mr.Ashwin A. Naik with Mr.C.F.Bilimoria for the Applicants
Mr.S.V.More, A.P.P. for State

CORAM: A.S.OKA,J.
DATE : OCTOBER 16,2006.

P.C.:

1. The prayer in this Application under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Code) is for quashing the notice dated 5th July 2006 purportedly issued under section 111 of the said Code. By the said notice, a direction was issued to the Petitioners to execute an interim bond as required by sub section 3 of section 116 of the said Code.

2. The learned Advocate for the Applicants submitted that the show cause notice is issued only on the basis of a dispute between the private parties. He submitted that a preliminary order as contemplated under section 111 of the said Code has not been passed. He submitted that no reason is assigned for passing the order under sub section 3 of section 116 of the said Code.

3. The learned A.P.P. appearing for the Respondents has placed before me the file of proceedings. He opposed the submission by pointing out that the challenge is only to the show cause notice.

4. I have perused the original file of the proceedings. The show cause notice which is impugned in this Application has been issued under section 111 of the said Code. Section 111 mandates that when a Magistrate acting under section 107, section 108, section 109 or section 110 deems it necessary to require any person to show cause under such section, he shall make an order in writing setting forth the substance of the information received, the amount of bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required. Section 114 of the said Code requires that every summons or warrant issued under section 113 shall be accompanied by a copy of the order made under section 111 of the said Code. Perusal of the file shows that an order as contemplated under section 111 has not been passed by the Special Executive Magistrate.

5. A learned Single Judge of this court in the case of Smt.Christalin Costa and others Vs. State of Goa and others [1993 (2) Mh.L.J. P. 1409] held that show cause notice can be issued only after an order is made by the Magistrate under section 111 of the said Code. An order is passed directing the Applicants to furnish interim bond. Such order can be passed only for the reasons recorded in writing. I find that no such reasons are recorded. It is obvious that in absence of order made under section 111 of the said Code, initiation of proceedings under Chapter VIII is bad in law. In the result, Application must succeed.

6. Hence, I pass the following order :

. Rule is made absolute in terms of prayer clause (a).

JUDGE